

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

9	SANDRA MCKINNON and KRISTEN)	Case No. CV 12-cv-04457-SC
10	TOOL, individually and on behalf)	
	of others similarly situated,)	ORDER GRANTING IN PART AND
11	Plaintiffs,)	DENYING IN PART MOTIONS TO FILE
)	<u>UNDER SEAL</u>
12	v.)	
)	
13	DOLLAR THRIFTY AUTOMOTIVE GROUP,)	
	INC. d/b/a DOLLAR RENT A CAR;)	
14	DOLLAR RENT A CAR, INC.; DTG)	
	OPERATIONS, INC. d/b/a DOLLAR)	
15	RENTA A CAR; et al.,)	
)	
16	Defendants.)	
)	

The parties are in the process of briefing two motions in this case: Defendants' motion to exclude the expert testimony of Donald R. Lichtenstein, ECF No. 105, and Plaintiffs' motion for class certification, ECF No. 92. Defendants have filed motions to seal documents (or portions of documents) submitted in support of their motion to exclude, ECF No. 104 ("Seal Mot. I"), and in opposition to Plaintiffs' motion, ECF No. 106 ("Seal Mot. II"). Neither motion is adequately limited to sealable material, and neither follows the Civil Local Rules. Nonetheless, some of the information Defendants seek to seal is indeed sealable. As a

1 result, and for the reasons outlined below, the motions are GRANTED
2 in part and DENIED in part.

3 The Court reminds the parties that administrative motions to
4 file documents under seal must be accompanied by (A) a declaration
5 establishing that the document or portions thereof is sealable; (B)
6 a proposed order that is narrowly tailored to seal only the
7 sealable material, and which lists in table format each document or
8 portion thereof that is sought to be sealed. Defendants' motions
9 to file documents under seal are not narrowly tailored, the
10 supporting declarations are insufficient to establish that the
11 information is sealable, and the proposed orders do not contain the
12 required lists in table format. Most importantly, "[c]ourts have
13 recognized 'a general right to inspect and copy public records and
14 documents, including judicial records and documents.'" Kamakana v.
15 City & Cnty. of Honolulu, 447 F.3d 1172, 1178 (9th Cir. 2006)
16 (citing Nixon v. Warner Commc'ns, Inc., 435 U.S. 589, 597 & n.7
17 (1978)). The sealing of documents requires "compelling reasons
18 sufficient to outweigh the public's interest in disclosure and
19 justify sealing court records" and "overcome the strong presumption
20 of access to judicial records" Id. at 1179 (internal
21 citations and quotations omitted). Most of Defendants'
22 explanations for their requests to seal documents are general,
23 boilerplate explanations that fall well short of demonstrating
24 compelling reasons for keeping information from the public.

25 That said, some of the information Defendants seek to seal is
26 indeed sealable. Many of the documents contain internal sales
27 numbers or statistics that Defendants rightly hope to keep from
28 their competitors. Others contain personal details or contact

1 information that should be kept private. The motions, therefore,
2 are GRANTED with respect to that sealable material.

3 However, Defendants' motions strike the Court as exceedingly
4 overbroad in other instances. For example, Exhibit 2 to
5 Defendants' motion to exclude is the deposition of Donald R.
6 Lichtenstein. The exhibit contains 250 pages of deposition
7 transcript, and Defendants ask the Court to seal the entire
8 document. While a small minority of Mr. Lichtenstein's testimony
9 may touch on sensitive issues that might properly be filed under
10 seal, much of the deposition is not sealable.

11 Moreover, an exemplar of Defendants' repeated and mostly
12 unhelpful justifications for sealing information is that it

13 contains sensitive and confidential business information,
14 including summaries of Dollar's total sales information.
15 This information is valuable to Dollar and is not
16 publicly available, and is thus trade secret information
as defined in California Civil Code § 3426.1. Revealing
this information would harm Dollar vis-à-vis its
competitors.

17 See ECF Nos. 104-1 ("Ward Decl. I") ¶¶ 3, 4, 5; 106-1 ("Ward Decl.
18 II") ¶¶ 5. Defendants also repeat very similar justifications for
19 sealing information with respect to other documents. See Ward
20 Decl. II ¶¶ 4, 6, 7, 8, 9, 11(a). Those justifications are
21 insufficient to convince the Court that there are compelling
22 reasons for sealing significant portions of the information
23 Defendants hope to redact. Defendants apparently believe that
24 their proprietary training materials and marketing strategy
25 information are always sealable. They therefore seek to seal any
26 information that references those sources of information, even when
27 the information cited is extremely general and innocuous. For
28 example, Defendants seek to seal the facts that some of their

1 customers might have credit cards that do not provide rental car
 2 insurance and that some corporate customers have contracted with
 3 Defendants for rates that include insurance products. See ECF Nos.
 4 16-16 at 5 (filed under seal), 106-18 ¶ 23 (filed under seal). As
 5 another example, Defendants seek to seal the facts that their
 6 rental sales agents receive intensive initial training and then
 7 continue to receive ongoing training. See ECF No. 106-18 ¶ 53
 8 (filed under seal). In yet another example, Defendants seek to
 9 redact the fact that customers can rent cars from Defendant Dollar
 10 Rent A Car through travel websites like Expedia. But Expedia
 11 publicly advertises that fact on its website. See Find Dollar Car
 12 Rentals, Expedia, [http://rental-cars.expedia.com/car-](http://rental-cars.expedia.com/car-vendors/dollar-rent-a-car/)
 13 [vendors/dollar-rent-a-car/](http://rental-cars.expedia.com/car-vendors/dollar-rent-a-car/) (last visited April 16, 2015). The
 14 Court fails to see why public access to that information might harm
 15 Defendants.¹

16 As a result of Defendants' attempts to seal these and other
 17 similarly innocuous pieces of information, the motions to file
 18 under seal are GRANTED in part and DENIED in part. The Court lists
 19 in the table below the documents or portions thereof for which the
 20 motions are granted or denied. Normally, Defendants would be
 21 required to submit revised redacted versions of these documents
 22 consistent with the Court's order. See Civ. L.R. 79-5(f)(3).

23
 24 ¹ The Court also reminds the parties that the protective order in
 25 this case provides, regarding designation of material for
 protection under seal, that:

26 Mass, indiscriminate, or routinized designations are
 27 prohibited. Designations that are shown to be clearly
 unjustified . . . shall expose the Designating Party to
 28 sanctions.

ECF No. 49 ("Protective Order") at 4-5.

However, the Court will permit Defendants, if they choose, to instead submit revised motions to file under seal that are narrowly tailored and supported by declarations adequately explaining the compelling reasons for sealing the information.

The Court admonishes the parties that the Court might not be so lenient with respect to future motions to file under seal. Failure to narrowly tailor future requests to seal or to adequately explain the reasons for sealing information may result in outright denial of the motion and an order to file in the public record.

Defendants' motions to file under seal are GRANTED or DENIED as described in the table below:

ECF No. (Description)	Ruling on Motion to File Under Seal
104-6 (Motion to Exclude)	GRANTED
104-7 (MTE Ex. 1)	DENIED
104-8 (MTE Ex. 2)	DENIED
106-16 (Class Certification Opposition)	GRANTED IN PART DENIED as to first paragraph on page 4
106-18 (Cert. Opp'n Ex. 2)	GRANTED IN PART DENIED as to paragraphs 23, 53-60
106-25 (Cert. Opp'n Ex. 5)	GRANTED
106-28 (Cert. Opp'n Ex. 7)	DENIED
106-29 (Cert. Opp'n Ex. 8)	DENIED
106-30 (Cert. Opp'n Ex. 9)	GRANTED
106-31 (Cert. Opp'n Ex. 10)	GRANTED
106-32 (Cert. Opp'n Ex. 11)	GRANTED IN PART DENIED as to paragraph 22
106-33 (Cert. Opp'n Ex. 12)	GRANTED

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1 The Court hereby ORDERS that Defendants may file either (1)
2 revised redacted versions of the documents they seek to seal
3 consistent with this order, or (2) a revised motion to file these
4 documents under seal that properly tailors the redactions to
5 sealable material and adequately explains the compelling reasons
6 for sealing that material. Whichever route Defendants choose, they
7 must abide by the seven (7) day deadline set out in Civil Local
8 Rule 79-5(f)(3).

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10 IT IS SO ORDERED.

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12 Dated: April 20, 2015

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14 UNITED STATES DISTRICT JUDGE
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